

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  HOMETOWN SILVER CREEK LLC AND HOMETOWN FIVE SEASONS DAVENPORT LLC	DOCKET NOS. DRU-03-1 WRU-03-14
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**DECLARATORY ORDER, ORDER GRANTING MOTION FOR APPROVAL OF  
SETTLEMENT AGREEMENT, AND GRANTING WAIVER**

(Issued April 2, 2003)

**PROCEDURAL BACKGROUND**

On January 2, 2003, Hometown Silver Creek LLC and Hometown Five Seasons Davenport LLC (Petitioners) filed a petition with the Utilities Board (Board) requesting a declaratory order that Board rule 199 IAC 21.3 is not applicable to the provision of water service by Petitioners to individual residents in the manufactured home communities owned and operated by Petitioners. The petition was identified as Docket No. DRU-03-1. The petition is filed pursuant to the provisions of Iowa Code § 17A.9 and Board rule 199 IAC 4.1. The specific fact situation on which Petitioners are requesting the declaratory ruling involves the submetering by Petitioners of water service to the homes in the communities that they own. In the alternative, Petitioners request the Board grant a waiver of the rule, if the Board finds the rule applies to Petitioners' operations.

The Board by order issued January 7, 2003, gave notice of the request for declaratory order and set the matter for specified proceedings, including an

intervention and response date and a date for objections and replies. On January 31, 2003, the Board issued an order granting intervention to the Consumer Advocate Division of the Department of Justice (Consumer Advocate), requesting additional information from Petitioners, and establishing March 3, 2003, as the date for issuing the declaratory order. On February 12, 2003, the Board granted late-filed intervention to Iowa-American Water Company (Iowa-American).

The Board on February 28, 2003, issued an order granting a motion to extend the date for issuing the declaratory order to April 2, 2003.

On March 24, 2003, Petitioners filed a "Settlement Agreement" reached with the other parties and a "Joint Motion For Approval Of Settlement Agreement." The settlement agreement, if approved, would waive the provisions of 199 IAC 21.3(1)"b" and allow Petitioners to charge residents the same rate for water service as charged by Iowa-American to residential customers.

### **DISCUSSION OF DECLARATORY ORDER**

The facts to be considered in addressing the declaratory order are:

- 1) Petitioners own and operate two separate manufactured home communities in Davenport, Iowa, with approximately 550 total home sites;
- 2) Iowa-American is a public utility regulated by the Board and provides water service to a master meter at each of the two communities owned by Petitioners;

3) Petitioners supply water service to each home site in the two communities from the master meters through water distribution systems constructed, maintained, and operated by Petitioners;

4) Petitioners submeter each of the home sites and the individual residents pay Petitioners for the water service. Petitioners charge the individual residents at the same rate as used by Iowa-American for single-family residences.

Rule 199 IAC 21.3 provides general service requirements for regulated water utilities. Paragraph 21.3(1)"b" provides that "[s]eparate premises shall be separately metered and billed. Submetering shall not be permitted." The issue presented by Petitioners is whether this paragraph is applicable to the submetering of water service by Petitioners to the two manufactured home communities.

#### **1. PETITIONER'S POSITION ON DECLARATORY ORDER**

Petitioners argue that 199 IAC 21.3(1)"b," which prohibits submetering, does not apply to the residential communities that they own because Iowa Code § 476.1 exempts waterworks having fewer than 2,000 customers. Petitioners serve a total of 550 home sites. Petitioners also argue that they can submeter under the provisions of Iowa Code § 562B.14(6), which states that Petitioners, as manufactured home community landlords, shall provide a written explanation of utility rates, charges, and services to the prospective tenant before the rental agreement is signed unless the utility charges are paid by the tenant directly to the utility company. This, Petitioners argue, establishes the legislature's intent to authorize owners of manufactured home communities to submeter and charge for water service.

## **2. CONSUMER ADVOCATE'S POSITION ON DECLARATORY ORDER**

Consumer Advocate states that Hometown Management, Inc., the management affiliate of Petitioners, should be considered one entity for purposes of determining whether there are 2,000 customers taking water service from Petitioners and affiliates. Consumer Advocate then argues that Iowa-American is subject to the Board's rules and is required to provide service in compliance with those rules. Consumer Advocate states that Iowa-American cannot provide service to Petitioners when Iowa-American knows Petitioners are in violation of Board rules. The prohibition against submetering of water service advances the requirements of providing reasonably adequate service at just, reasonable, and nondiscriminatory rates.

## **3. IOWA-AMERICAN WATER COMPANY'S POSITION ON THE DECLARATORY ORDER**

Iowa-American states that it joins in the position of Consumer Advocate.

## **BOARD DECISION**

The primary issue to be addressed by the Board in this declaratory order is whether the Board has jurisdiction over Petitioners' submetering of water to their manufactured home communities. If the Board finds that it has jurisdiction over Petitioners' activities, then the submetering is prohibited by 199 IAC 21.3(1)"b." The Board recognizes that Iowa Code chapter 562B establishes the duties and obligations of a manufactured home community owner and Iowa Code § 562B.14(6) indicates that the owner may provide and charge for unspecified utility services. However, § 562B.16(1)"a" requires that the owner comply with the requirements of all

applicable city, county, and state codes materially affecting health and safety which are primarily imposed upon the owner. Iowa Code chapter 476 provides the Board with authority over the water operations of Iowa-American, and Petitioners, as customers of Iowa-American, are subject to the Board's rules with regard to the water service provided by Iowa-American.

The information provided by Petitioners concerning their water operations indicates that they are customers of Iowa-American and have not held themselves out as private water suppliers or public water utilities. Petitioners have indicated that they have not obtained Iowa Department of Natural Resources (IDNR) identification numbers for their private water systems, have not provided reference samples to IDNR, and have not paid annual fees to IDNR.

Petitioners have also indicated that Hometown Management operates other manufactured home communities and supplies water to those communities from various sources. Those water supply systems are:

1. Lakeside in Davenport, Iowa, that receives water from a private well and has 127 home sites;
2. Cedar Terrace in Cedar Rapids, Iowa, that receives water from Cedar Rapids Municipal Utilities through a master meter and has 227 home sites;
3. Marion Village in Marion, Iowa, that receives water from the City of Marion through a master meter and has 486 home sites;

4. Five Seasons Cedar Falls in Cedar Falls, Iowa, that receives water from Cedar Falls Utilities through a master meter and has 130 home sites;

5. Cedar Knoll in Waterloo, Iowa, that receives water from the City of Waterloo through a master meter and then the city submeters the resident's use. This community has 290 home sites.

Petitioners have not held themselves out as water suppliers and complied with IDNR regulations and the Board finds they are, therefore, customers of Iowa-American. If Petitioners were to receive a permit from IDNR as water suppliers, they would not be subject to Board jurisdiction since they do not have, in aggregate, 2,000 or more customers, but that exception does not apply here. Therefore, the Board finds that it has jurisdiction over water service to Petitioners as customers of Iowa-American. The Board has jurisdiction over the operations of Iowa-American and the Board's rule against submetering water service prevents Iowa-American from providing water service to customers that submeter the water unless the rule is waived by the Board.

As stated by Consumer Advocate, Iowa-American may not provide service to a customer if doing so will cause a violation of a Board rule. Iowa Code § 562B.14(6) does not override the statutory obligation of the Board to assure that regulated public water utilities provide reasonably adequate service at just and reasonable rates. Assuming Petitioners may submeter water service and charge residents for the water under the provisions of Iowa Code § 562B.14(6), Iowa-American is still prohibited from providing water service to Petitioner's communities in violation of Board rules.

The Board has the obligation to ensure that the rates for water provided by a public water utility are just, reasonable, and nondiscriminatory. The rule prohibiting submetering is one of the means by which the Board meets these statutory obligations.

### **DECLARATORY ORDER**

The Board concludes that, in absence of a waiver, 199 IAC 21.3(1)"b" prohibits Iowa-American from supplying water to Petitioners, since Petitioners submeter the water to residents of the manufactured home communities.

### **WAIVER AND SETTLEMENT AGREEMENT**

Petitioners requested a waiver of 199 IAC 21.3(1)"b" if the Board found that it had jurisdiction over the submetering of the water service. As discussed above, the Board has found that the prohibition against submetering in 199 IAC 21.3(1)"b" applies to the water operations of Petitioners. Petitioners have filed a settlement agreement which, if approved, would waive the provisions the Board's rule.

The settlement agreement entered into among all of the parties in this docket would allow Petitioners to charge the residential rates of Iowa-American's Rate Schedule No. 1 to the residents of Petitioners' manufactured housing communities. The agreement also provides that Petitioners may adjust rates to their residential customers if Iowa-American adjusts the rates in Rate Schedule No. 1. The agreement then provides that Petitioners may in good faith seek to have the settlement rescinded if Petitioners find that the rates in Iowa-American's Rate Schedule No. 1 do not provide Petitioners with sufficient income to cover costs,

reserves, and a reasonable return related to delivery of water. The terms of the agreement must be approved in its entirety or it is null and void.

To waive a Board rule, the Board must find based upon clear and convincing evidence that the four criteria in 199 IAC 1.3 are met. Those criteria are: 1) that the application of the rule would pose an undue hardship, 2) that the waiver would not prejudice the substantial legal rights of any person, 3) that the provisions waived are not specifically mandated by statute, and 4) substantially equal protection of public health, safety, and welfare will be afforded after the waiver.

Although approval of the settlement will mean that residents will be paying higher water rates than they have in the past, the Board finds that this is not an undue hardship since the residents will be paying the same rates they would pay if they were direct Iowa-American customers. The settlement agreement provides residents with substantially the same protection against additional increases in water rates that they would have as Iowa-American customer.

Under the settlement and waiver, Petitioners will be able to continue submetering the water service to the residences in the manufactured home communities in a manner that would not be allowed for gas or electric service. The Board recently addressed the issue of submetering for gas and electric service in Docket No. RMU-02-6, in which the Board adopted rules that will allow submetering only if the owner does not charge the tenants more than the owner's total bill for the same period. 199 IAC 19.3(1)"b"(4) and 20.3(1)"b"(4). The restrictions on submetering for gas and electric service are based upon safety concerns and the public policy in favor of conservation of energy.



Submetering of water service does not raise the same safety concerns as gas and electric service and conservation of water, while important, does not rise to the same level as energy conservation. The Board considers this fact situation to be unique and the limitations on submetering found in the gas and electric service rules are not directly applicable to water service. If submetering of gas or electric service were being proposed by Petitioners, the Board would very likely not approve this settlement.

Based upon the unique facts of this situation, the Board finds that the waiver will not prejudice the substantial legal rights of any person. Residents will have protection against unexpected increases in water rates and any rights residents have pursuant to Iowa Code chapter 562B are not affected by the waiver. In addition, the provisions waived are not specifically mandated by statute and substantially equal protection of public health, safety, and welfare will be afforded after the waiver.

The Board will grant the motion to approve the settlement agreement based upon the above consideration of the four criteria in 199 IAC 1.3. However, the Board notes that the settlement agreement only addresses rate issues. From this, the Board concludes that Petitioners do not intend to apply utility-type customer service measures to their submetered residences. Specifically, the Board understands that Petitioners will not use services disconnection as a means of bill collection and will not require deposits for water service; if they intended to do so, they would have addressed the subject in the settlement agreement. The waiver granted herein is expressly conditioned upon this understanding.

**ORDERING CLAUSES**

**IT IS THEREFORE ORDERED:**

1. A declaratory order as described in this order is issued in response to the petition filed by Hometown Silver Creek LLC and Hometown Five Seasons Davenport LLC on January 2, 2003.

2. The "Joint Motion for Approval of Settlement Agreement" filed by Hometown Silver Creek LLC and Hometown Five Seasons Davenport LLC on March 24, 2003, is granted.

3. A waiver of the prohibition against submetering in 199 IAC 21.3(1)"b" is granted to Hometown Silver Creek LLC and Hometown Five Seasons Davenport LLC for the two manufactured homes communities which they operate in Davenport, Iowa, as described in the body of this order.

**UTILITIES BOARD**

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 2<sup>nd</sup> day of April, 2003.